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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,286	08/17/2001	Steven B. McGowan	884.516US1	4742

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EXAMINER

HASHEM, LISA

ART UNIT PAPER NUMBER

2645

2

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No. 09/932,286	Applicant(s) MCGOWAN, STEVEN B.	
Examiner Lisa Hashem	Art Unit 2645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 17 August 2001.
- 2a)  This action is FINAL.
- 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) \_\_\_\_\_ is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) \_\_\_\_\_ is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) 1-33 are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All   b)  Some \*   c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: \_\_\_\_\_.

*Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-6, drawn to a sound generation device comprising a RF transmitter that transmits a RF carrier signal having a specific carrier frequency that is modulated with an audio signal, classified in class 455, subclass 42.
  - II. Claims 7-9, drawn to a sound reproduction system to tune a RF receiver to one of a plurality of RF channels whose signal strength is below a predetermined minimum value, classified in class 348, subclass 564.
  - III. Claims 10-15, drawn to a RF receiver to determine whether a carrier is received at a first frequency, classified in class 455, subclass 62.
  - IV. Claims 16-23, drawn to a RF transceiver to determine whether a carrier is received at a first frequency, classified in class 455, subclass 87.
  - V. Claims 24-27 and 31-33, drawn to a portable entertainment system comprising a RF transmitter and a geoposition source; receiving geoposition information, classified in class 455, subclass 414.1.
  - VI. Claims 28-30, drawn to a sound reproduction system comprising operating a RF receiver to receive audio material on a FM channel, classified in class 455, subclass 501.
2. Inventions I-VI are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable.

Art Unit: 2645

- In the instant case, invention I has separate utility than inventions II, III, IV, V, and VI such as the invention associated with a channel location controller to identify an available carrier frequency and an audio source to generate an audio signal.
- Invention II has separate utility than inventions I, III, IV, V, and VI such as the invention associated with a channel selection circuit coupled to the RF tuner, to receive a channel selection signal from an ancillary device.
- Invention III has separate utility than inventions I, II, IV, V, and VI such as the invention associated with a RF receiver comprising marking the first frequency as unavailable or available and depending on unavailability determining a second frequency.
- Invention IV has separate utility than inventions I, II, III, V, and VI such as the invention associated with a RF transceiver comprising marking the first frequency as unavailable or available and depending on unavailability determining a second frequency.
- Invention V has separate utility than inventions I, II, III, IV, and VI such as the invention associated with using a geoposition to find an available transmission frequency.
- Invention VI has separate utility than inventions I, II, III, IV, and V such as the invention associated with selecting a FM channel within a broadcast range.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, and have acquired a separate

Art Unit: 2645

status in the art because of their recognized divergent subject matter, and the search required for each invention is not required for the other, restriction for examination purposes as indicated is proper. See MPEP § 806.05(d).

4. A telephone call was made to Applicants' representative, Walter Nielsen (Reg. No. 25,539), on June 14, 2004, to request an oral election to the above restriction requirement, but did not result in an election being made.

5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

6. Applicants are reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently filed petition under 37 C.F.R 1.48(b) and by the fee required under 37 C.F.R 1.17(i).

7. A shortened statutory period for response to this action is set to **expire 0 (zero) months and 30 (thirty) days** from the mail date of this letter. Failure to respond within the period for response will result in **ABANDONMENT** of the applicant (see 35 U.S.C 133, MPEP 710.02, 710.02 (b)).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa Hashem whose telephone number is (703) 305-4302. The examiner can normally be reached on M-F 8:30-5:30.

Art Unit: 2645

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on (703) 305-4895. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

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June 15, 2004

FAN TSANG  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

